

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

DOLORES LORENZANA MORENO and  
JOSE MOGUEL COTALLO,

Plaintiffs,

v.

CIV 12-0436 MV/KBM

MICHAEL J. ASTRUE,  
Commissioner of Social Security,<sup>1</sup>

Defendant.

**PROPOSED FINDINGS**  
**AND**  
**RECOMMENDED DISPOSITION**

On July 28, 2010, an Administrative Law Judge denied benefits to Plaintiffs because they did not meet the duration necessary for the residency requirements under 20 C.F.R. §§ 416.1600, 1603. *See Doc. 14-1* at 17-18. The Appeals Council denied their request for review on February 24, 2012. *Id.* at 4. On April 25, 2012, Plaintiffs appealed pro se because the Administration advised them to “keep appealing until 07/14/12,” the date that they “will have 5 years as residents.” *Doc. 1* at 2.

Plaintiffs did not file a motion to remand as directed by the Court’s scheduling order nor did they consent to a magistrate judge to serve as the presiding judge within the time frame to do

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<sup>1</sup> Commissioner Astrue’s term expired on January 19, 2013. That fact will not delay entry of a disposition in this case. Under the rule, this action does not abate if the Commissioner position is vacant, and the Court will automatically substitute the new Commissioner once he or she is appointed. *See* FED. R. CIV. P. 25(d); <http://www.socialsecurity.gov/pressoffice/factsheets/astrue.htm>.

so. *See Docs. 15, 18.* The matter was reassigned to District Judge Vázquez as presiding judge and to me as the referral magistrate judge on January 16, 2013. *See Doc. 19.*

This Court must review the decision based on the amount of time Plaintiffs had been residents in the United States as of the date the ALJ issued his decision – July 28, 2010. In their April 25, 2012 Complaint, Plaintiffs acknowledged that they would not reach the five-year residency requirement until July 14, 2012. *See Doc. 1* at 2. Having conceded that point, this appeal clearly lacks merit. *See 20 C.F.R. § 416.1600, et seq.* Accordingly, this case should be dismissed. Of course, Plaintiffs are free to reapply for benefits with the Administration as it appears they now may meet the residency duration requirement.

Wherefore,

**IT IS HEREBY RECOMMENDED** that this action be dismissed WITHOUT prejudice.

**THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE** of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**



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UNITED STATES CHIEF MAGISTRATE JUDGE